IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 1574 OF 2003
WITH
CRIMINAL APPEAL NO. 1553 OF 2003
WITH
CRIMINAL APPEAL NO. 294 OF 2004
WITH
CRIMINAL APPEAL NO. 1546 OF 2003
WITH
CRIMINAL APPEAL NO. 1859 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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BADRUDDIN FUSADIN CHARAN - Appellant
Versus
STATE OF GUJARAT - Opponent

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Appearance :
MS SADHANA SAGAR for Appellant in Criminal Appeal No. 1574 of 2003.
MR JANAK V JAPEE for Appellant in Criminal Appeal No. 1553 of 2003.
MR JANAK V JAPEE for Appellant in Criminal Appeal No. 294 of 2004.
MS SUBADRA G PATEL for Appellant in Criminal Appeal No. 1546 of 2003.
MR M R VYAS for Appellants in Criminal Appeal No. 1859 of 2004.
MR L R POOJARI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21/08/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. All these appeals preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure are heard and disposed of by the common judgment. The appellants, who are aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Fast Track Court, Himatnagar dated 18-10-2003 in Sessions Case No. 51 of 2002, imposing rigorous imprisonment for 10 years and fine of Rs. 25,000/- (Rupees Twenty Thousand Only), in default simple imprisonment for 2 years under Section 395 of Indian Penal Code, 1860, have preferred the present appeals.

2. The short facts are stated as under:

The complainant, Chhanabhai Narandas Rana and another person, namely, Shailendrasinh boarded luxury bus from Jaipur on 23-11-2001 at about 3 AM along with 20 Gold-biscuits as per the instructions given by the owner of the company. When they reached near Shamlaji, while travelling on National Highway No. 8, the appellants started beating Shailendrasinh

and took 20 Gold-biscuits and, thereafter, robbed Chhanabhai Narandas Rana and took 34 Gold-biscuits worth Rs. 28,51,200/- and, thus, all the appellants aided and abetted each other in committing dacoity and, thereby, they have committed offence punishable under Section 395 IPC.

The complaint was given by Chhanabhai Narandas Rana on 25-11-2001 to the Prantij Police Station, and on the strength of the complaint given by Chhanabhai, offence was registered against the appellants punishable under Section 395 IPC. The place where the incident took place was visited and the *panchnama* of the place of incident was prepared in the presence of *panch-witnesses*. The *panchnama* of the recovery of the Gold-biscuits was also prepared in the presence of *panch-witnesses*. The statement of the witnesses were recorded. The Gold-biscuits, which were recovered, were sent to FSL for the purpose of detailed analysis. Identification parade of the appellants was carried out.

On receipt of the report from FSL and other materials on the record of the case, the appellants were charge-sheeted and produced before the Judicial Magistrate (First Class) at Bhiloda, who in turn, committed the case to the Sessions Court under Section 209 of the Code of Criminal Procedure, as the case was exclusively triable by the Sessions Court.

The charge against the appellants was framed at Exh. 6 and all the appellants pleaded not guilty to the charge levelled against them. Therefore, the

matter was set down for full-fledged trial before the learned Additional Sessions Judge, Fast Track Court, Himmatnagar.

The prosecution has, in order to establish the guilt of the appellants, examined the following witnesses:-

(i) PW-1 Complainant Chhanadas Rana at Exh. 14.
(ii) PW-2 Witness Shailendrakumar Rampyare Pande at Exh. 16.
(iii) PW-3 Witness Ajaykumar Shamjibhai Parekh at Exh. 24.
(iv) PW-4 *Panch-witness* Lalsinh Magansinh Parmar at Exh. 25.
(v) PW-5 *Panch-witness* Devusinh Vakhatsinh Chauhan at Exh. 27.
(vi) PW-6 *Panch-witness* Vasantlal Jivram Modi at Exh. 29.
(vii) PW-7 *Panch-witness* Ajitbhai Jivabhai Kharadi at Exh. 33.
(viii) PW-8 *Panch-witness* Jivaji Adheraji Kharadi at Exh. 35.
(ix) PW-9 *Panch-witness* Ibrahimbhai Ismailbhai Dodiya at Exh. 36.
(x) PW-10 *Panch-witness* Valibhai Amdabhai Patel at Exh. 37.
(xi) PW-11 *Panch-witness* Kantibhai Kalabhai Rathod at Exh. 39.
(xii) PW-12 *Panch-witness* Vinodbhai Jivabhai Lata at Exh. 41.
(xiii) PW-13 *Panch-witness* Dhulabhai Somabhai Ninama at Exh. 42.

(xiv) PW-14 *Panch-witness* Pravinbhai Vidhasagar Ninama at Exh. 44.

(xv) PW-15 *Panch-witness* Chandusinh Kansinh Zala at Exh. 45.

(xvi) PW-16 *Panch-witness* Pramodgiri Kishangiri Goswami at Exh. 47.

(xvii) PW-17 *Panch-witness* Manojpuri Kishangiri Goswami at Exh. 49.

(xviii) PW-18 *Panch-witness* Papusinh Harjitsinh Raval at Exh. 50.

(xix) PW-19 *Panch-witness* Gulabsinh Bhavarsinh Marot at Exh. 52.

(xx) PW-20 *Panch-witness* Anil Satyanarayan Parikh at Exh. 53.

(xxi) PW-21 *Panch-witness* Motilal Rameshwarlal Sharma at Exh. 55.

(xxii) PW-22 Witness Prakashchandra Shriram Agrawal at Exh. 56.

(xxiii) PW-23 Witness Dharmendrakumar Harishkumar Choksi at Exh. 58.

(xxiv) PW-24 *Panch-witness* Savjibhai Harjibhai Patel at Exh. 62.

(xxv) PW-25 *Panch-witness* Sudhirkumar Amrutlal Raval at Exh. 63.

(xxvi) PW-26 *Panch-witness* Shaileshkumar Bababhai Nayee at Exh. 66.

(xxvii) PW-27 Witness Shivpal Ramavtar Sharma at Exh. 67.

(xxviii) PW-28 *Panch-witness* Sikandarali Niyamatali Shaikh at Exh. 68.

(xxix) PW-29 Witness Rajendra Chiranjilal Sharma at Exh. 70.

(xxx) PW-30 Witness Shrigopal Chiranjilal Sharma

at Exh. 71.

(xxxi) PW-31 Witness Nathulal Ramgopal at Exh. 72.

(xxxii) PW-32 Witness Nandasinh Bhavarsinh Ravat at Exh. 73.

(xxxiii) PW-33 Witness Amitbhai Indrakumar Goyal at Exh. 75.

(xxxiv) PW-34 Executive Magistrate Shri Narendrakumar Chamanlal Mankad at Exh. 77.

(xxxv) PW-35 PSO Savitaben Valjibhai Pandore at Exh. 82.

(xxxvi) PW-36 PSO Mavjibhai Nanjibhai at Exh. 84.

(xxxvii) PW-37 Investigating Officer PSI Dilipsinh Jadeja at Exh. 86.

(xxxviii) PW-38 Investigating Officer CPI Ramsinh Chavda at Exh. 87.

(xxxix) PW-39 Investigating Officer PSO Kantibhai Patel at Exh. 88.

(xl) PW-40 Witness Scientific Officer Dr. Nirmalaben at Exh. 92.

(xli) PW-41 Investigating Officer PSI Indrasinh Rana at Exh. 99.

(xlii) PW-42 Witness Medical Officer Shri Ganshyam Goyal at Exh. 100.

(xliii) PW-43 Investigating Officer PI Natvarlal Parmar at Exh. 102.

The prosecution has also produced the following documentary evidence:-

(i) Complaint at Exh. 15.

(ii) Ticket book of bus-travel at Exh. 18.

(iii) Yadi for treating injured witness Shailendra at Exh. 19.

(iv) Certificate issued by the Corporation Bank regarding transfer of Gold-biscuits at Exh. 20.

(v) Copy of Customer Slip issued by the Corporation Bank and the Acccounts of Balaji Company at Exh. 21.

(vi) Copy of order directing Corporation Bank, Jaipur to deliver 200 Gold-biscuits as well as the copy with the Bank seal at Exh. 22.

(vii) Copy of the Accounts of Balaji Bullion Company relating to transactions of Gold-biscuits at Exh. 23.

(viii) *Panchnama* with regard to Identification Parade of accused Kailashsinh at Exh. 26.

(ix) *Panchnama* with regard to Identification Parade of accused Rajeshbhai @ Pinto at Exh. 28.

(x) *Panchnama* with regard to Identification Parade of accused Chhotu @ Chunilal Shiv Mayur at Exh. 30.

(xi) *Panchnama* of place of incident at Exh. 32.

(xii) *Panchnama* of luxury bus No. RJ-14-1-P-0299 at Exh. 34.

(xiii) *Panchnama* of Identification Parade of accused Anandilal @ Anandkumar at Exh. 38.

(xiv) *Panchnama* of person of accused Kailashsinh Chhagansinh at Exh. 40.

(xv) *Panchnama* of place of incident shown by accused Kailashsinh Chhagansinh at Exh. 43.

(xvi) *Panchnama* of seizure of jackets submitted by complainant Chhanabhai and witness Shailendra at Exh. 46.

(xvii) *Panchnama* of person of accused Anandilal @

Anandkumar at Exh. 47.

(xviii) *Panchnama* with regard to seizure of Gold-biscuits hidden by accused Kailashsinh in Witness Nandasinh's house in Bhojpura Biyarvar at Exh. 51.

(xix) *Panchnama* with regard with regard to 12 Gold-biscuits produced at Sikar by Servant Shivpal of Sikar Jewellers at Exh. 54.

(xx) Certificate of weight and valuation of Gold-biscuits issued by Witness Prakashchandra at Exh. 57.

(xxi) Certificate of weight of Gold-biscuits issued by Tirupati Jewellers at Exhs. 59 and 60.

(xxii) *Panchnama* of weighing of 12 Gold-biscuits by Tirupati Jewellers at Exh. 64.

(xxiii) Pachnama of seizure of 6 Gold-biscuits produced by Rajendra Sharma at Sikar at Exh. 65.

(xxiv) Pachnama of seizure of 7 Gold-biscuits produced by Rajendra Sharma at Sikar at Exh. 69.

(xxv) Tourist Permit Chart at Exh. 76.

(xxvi) Police Yadi regarding Identification Parade of accused Kailashsinh at Exh. 78.

(xxvii) Police Yadi regarding Identification Parade of accused Anandilal at Exh. 79.

(xxviii) Police Yadi regarding Identification Parade of accused Badridan Charan and Rajendra at Exh. 80.

(xxix) Police Yadi regarding Identification Parade of accused Chhotulal at Exh. 81.

(xxx) Extract of complaint entered in Station

Diary at Prantij Police Station at Exh. 83.

(xxxi) Extract of entries in Station Diary at Shamlaji Police Station for registering the offence at Exh. 85.

(xxxii) Certificate issued by Swarnmala Jewellers at Exh. 89.

(xxxiii) Police Yadi for conducting lie-detector test at Exh. 93.

(xxxiv) Lie-detect / Polygragh and writings of accused Kailashsinh at Exh. 94.

(xxxv) Lie-detect / Polygragh and writings of accused Anandilal at Exh. 95.

(xxxvi) Lie-detect / Polygragh and writings of accused Chhanabhai Narandas at Exh. 97.

(xxxvii) Lie-detect / Polygragh and writings of witness Shailendra at Exh. 96.

(xxxviii) Forwarding letter and analysis of Lie-detective Test at Exh. 98.

(xxxix) Injury Certificate of Witness Shailendra at Exh. 101.

(xl) Letter addressed to the In-charge Police Station regarding Gold-biscuits at Exh. 103.

3. At the conclusion of trial, statement of all the appellants were recorded under Section 313 of the Code, and all the appellants stated in their further statement that a false case was foisted on them and they were falsely implicated in the case.

4. The learned Additional Sessions Judge considered the oral deposition and the documentary evidence adduced by the prosecution and held that the prosecution has established that the complainant –

Chhanabhai and another person Shailendrasinh boarded the bus from Jaipur to Surat and when the bus reached near Shamlaji on National Highway No. 8, the appellants, who were also travelling along with the complainant and Shailendrasinh, robbed them of Gold-biscuits and, thus, the prosecution has established involvement of the appellants in the commission of offence under Section 395 IPC. The learned Judge held that the deposition adduced by the complainant Shailendra Kumar Rampyare at Exh. 6 and Chhanabhai Narandas at Exh. 14 makes it abundantly clear that the appellants robbed them of the Gold-biscuits near Shamlaji on National Highway No. 8. The deposition gets necessary corroboration from the complaint which was given by Chhanabhai Narandas *vide* Exh. 15. In the complaint given by Chhanabhai Narandas, he has narrated the incident wherein the appellants committed dacoity near Shamlaji on Highway No. 8. How the dacoity was committed by the appellants is also elaborately narrated by him in his complaint. The learned Judge further held that the *panchnama* with regard to the recovery of the Gold-biscuits, the *panchnama* in respect of identification parade carried out by the Executive Magistrate further corroborates the prosecution case with regard to the dacoity committed by the appellants. The learned Judge also considered the report submitted by the FSL and held that the report given by FSL provides necessary link connecting the appellants with the commission of offence. Thus, the learned Judge, on the basis of the evidence on record of the case, held that the prosecution has established the entire link connecting the appellants with the commission of

crime under Section 395 IPC and imposed sentence of 10 years' RI and fine of Rs. 25,000/-, in default further SI of 2 years, on the appellants.

5. The learned Advocates representing the appellants made the following submissions:-

(a) The sentence of RI of 10 years and fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only), in default further SI of 2 years, imposed on the appellants is bad and arbitrary and contrary to the oral and documentary evidence on record of the case.

(b) The Trial Court ought to have held that there are many contradictions in the deposition adduced by the prosecution and when the basic ingredients of Section 395 were not proved by the prosecution, the appellants were required to be acquitted.

(c) The Trial Court has not appreciated the evidence on record of the case in proper perspective. The complaint was filed against the unknown persons and the prosecution has miserably failed to prove the identification of the appellants and, therefore, the appellants were liable to be acquitted.

(d) The *panch-witnesses*, who were examined by the prosecution, have also not supported either the *panchnama* or the identification

panchnama prepared by the prosecution and, therefore, benefit of doubt is also required to be given to the appellants.

(e) The investigation was carried out by the Investigating Officer in a slip-shod manner. He had not recorded the statements of the co-passengers who were present in the bus at the time of the alleged incident. Therefore, no independent witnesses were examined by the prosecution with a view to prove the involvement of the appellant in the commission of offence under Section 395 IPC.

(f) Thus, as there are many loopholes in the oral deposition and the documentary evidence relied upon by the prosecution, the benefit of same is required to be given to the appellants.

5. Mr. L. R. Poojari, learned Additional Public Prosecutor representing the State, has submitted that the charge was framed against the appellants on 23-11-2001. The complainant, who was travelling along with Shailendrasinh in a luxury bus from Jaipur to Surat, was robbed near Shamlaji on National Highway No. 8 by the appellants. The complainant and Shailendrasinh were having 100 Gold-biscuits each. As per the instructions given by the owner of the Company, they were taking the Gold-biscuits from Jaipur to Surat. The appellants, who were travelling in the same bus, gave threat and intimidation to the

complainant and Shailendrasinh and robbed them of 54 Gold-biscuits and, thus, the appellants have committed dacoity within the meaning of Section 395 IPC. The learned Additional Public Prosecutor submitted that the deposition given by PW-1 Chhanabhai at Exh. 14 is supported by PW-2 Shailendrakumar at Exh. 16. Both the witnesses have deposed in their testimony as to how the appellants robbed them of Gold-biscuits when they were travelling in a bus from Jaipur to Surat. The deposition adduced by Chhanabhai and Shailendrakumar is supported by the complaint given by Chhanabhai *vide* Exh. 15. Chhanabhai has narrated in his complaint about the manner in which the dacoity was committed by the appellants on National Highway No. 8 near Shamlaji when they were travelling in a luxury-bus from Jaipur to Surat with Gold-biscuits. The learned Additional Public Prosecutor submitted that the prosecution has also produced the documentary evidence such as the *panchnama* of the seizure of the Gold-biscuits *vide* Exh. 54, the *panchnama* of the place of the incident at Exh. 43, the *panchnama* with regard to the identification parade *vide* Exhs. 38, 40, 78, 79, 81, etc. in order to establish the link connecting the appellants with the commission of offence. The prosecution has also placed reliance on the polygraph test and the Report of the FSL to further corroborate the prosecution story with regard to the involvement of the appellants in the commission of offence. Thus, the learned Additional Public Prosecutor submitted that the prosecution has, on the basis of oral deposition and the documentary evidence established the entire link connecting the

appellants with the commission of offence, and as such, the prosecution has proved the involvement of appellants in the commission of offence beyond reasonable doubt. The learned Judge has rightly convicted the appellants for the offence punishable under Section 395 IPC and imposed the sentence of RI for 10 years and fine of Rs. 25,000/-, in default further SI for 2 years, and the sentence imposed by the learned Judge requires to be upheld.

6. This Court has heard the learned Advocates for the appellants, and Mr. L. R. Poojari, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record of the case.

7. The charge against the appellants is framed *vide* Exh. 6 for the offence punishable under Section 395 IPC. As per the prosecution case on 23-11-2001, at about 3.00 AM, complainant Chhanabhai Narandas Rana along with Shailendrasinh boarded the bus from Jaipur. They wanted to go to Surat and each of them was in possession of 100 Gold-biscuits. When they reached Ashirvad Hotel near Shamlaji on National Highway No. 8, they were robbed by the appellants who were also travelling in the said bus. The complaint was given by Chhanabhai Narandas Rana on 25-11-2001 to the Prantij Police Station wherein he has narrated as to how he along with Shailendra Kumar were returning from Jaipur in a bus with Gold-biscuits and in what manner they were confronted by the appellants

who were also travelling in the bus. The appellants, after giving threats and intimidation to the complainant and Shailendra, robbed them of 54 Gold-biscuits worth Rs. 28,51,200/-.

The prosecution has examined PW-1 Channabhai Narandas Rana at Exh. 14. He has deposed in his testimony that the incident took place on 23-11-2001 when he along with Shailendrasinh were travelling in a luxury bus from Jaipur to Surat. He has further deposed that when the bus reached near Ashirwad Hotel near Shamlaji on Highway No. 8, the appellants robbed them of the Gold-biscuits. On reaching Surat, he had informed the owner of the Company and subsequently, lodged the complaint against the appellants. During the course of deposition, he had identified the appellants.

Likewise, PW-2 Shailendrakumar Rampyare Pande, examined *vide* Exh. 16, has deposed in his testimony that when he was travelling along with Chhanabhai in a luxury bus from Jaipur to Surat, they were robbed by the appellants near Ashirwad Hotel near Ashirwad Hotel near Shamlaji on National Highway No. 8. He had also identified the appellants as well as *muddamal* articles shown to him during the course of the trial.

PW-3 Ajitkumar Shamjibhai Parekh, examined *vide* Exh. 24, has deposed in his testimony as to how the complainant and Shailendrasinh, who was entrusted the work to fetch the Gold-biscuits form Jaipur, were robbed when they were returning to Surat in a luxury-

bus on 23-11-2001.

The prosecution has examined PW-9 Ibrahimbhai Ismailbhai Dodiya vide Exh. 36 in order to establish that the *panchnama* with regard to the identification parade was prepared in his presence.

The deposition of PW-10 Valibhai Amdabhai Patel at Exh. 37 provides necessary corroboration to the deposition adduced by PW-9 Ibrahimbhai Ismailbhai Dodiya with regard to the identification parade of *panchnama* prepared in respect of the identification parade.

Muddamal article was weighed in the presence of PW-22 Prakashchandra Shriram Agrawal and he is examined by the prosecution to establish that Gold-biscuits, which were recovered from the appellants, were weighed in the presence of the Investigating Officer.

The owner of Goyal Travels – PW-33 Amitbhai Indrakumar Goyal is examined *vide* Exh. 75. He has been examined with a view to prove that the passengers travelling in the luxury-bus were robbed by the appellants.

PW-34 Executive Magistrate Shri Narendrakumar Chamanlal Mankad had carried out the identification parade. As per his testimony at Exh. 77, the identification parade was carried out by following the procedure in scrupulous manner. He has further deposed that *panchnama* with regard to the

identification parade was also prepared in the presence of *panch-witness*.

The complaint, which was given by Chhanabhai Narandas Rana about the dacoity committed by the appellants, was recorded in the Prantij Police Station by PW-35 Savitaben Valjibhai Pandore *vide* Exh. 82. The entries, which were made in the Station Diary, were identified by these witnesses during the course of deposition.

PW-37 Investigating Officer PSI Dilipsinh Mammaiyaji Jadeja, examined *vide* Exh. 86, PW-38 Investigating Officer CPI Ramsinh Chavda, examined *vide* Exh. 87, PW-39 Investigating Officer PSO Kantibhai Patel examined *vide* Exh. 88 and PW-43 PI Natvarlal Parmar examined *vide* Exh. 102 provide necessary corroboration to the prosecution case so as to establish the involvement of the appellants in the commission of the offence of dacoity.

PW-40 Scientific Officer Dr. Nirmalaben has deposed in her testimony that the Polygraph Test of the appellants – Chhagansinh Narandas Rana, Shailendrakumar Rampyare Pandey, Kailashsinh Chhagansinh Shankhla and Anandilal @ Anandkumar Jat – was carried out in her presence. The report with regard to the Polygraph Test was handed over to the Investigating Officer.

PW-42 Medical Officer Dr. Ghanshyam Goyal, who is examined *vide* Exh. 100, has deposed in his testimony that when he was working in the Community

Health Centre at Shamlaji, one person Shailendra Rampyare was brought for giving immediate treatment. He has further deposed in his testimony that after thorough examination, he had given the certificate to Shailendra and the same was identified by him during the course of the deposition.

The prosecution has, over and above the oral deposition, produced the documentary evidence, such as, *panchnama* of place of incident at Exh. 32, *panchnama* of luxury bus No. RJ-14-1-P-0299 at Exh. 34, *panchnama* of Identification Parade of accused Anandilal @ Anandkumar at Exh. 38, *panchnama* of person of accused Kailashsinh Chhagansinh at Exh. 40, *panchnama* of place of incident shown by accused Kailashsinh Chhagansinh at Exh. 43, *panchnama* of seizure of jackets produced by complainant Chhanabhai and witness Shailendra at Exh. 46, *panchnama* of person of accused Anandilal @ Anandkumar at Exh. 47, *panchnama* with regard to seizure of Gold-biscuits concealed by accused Kailashsinh in Witness Nandasinh's house in Bhojpura Biyarvar at Exh. 51, *panchnama* with regard with regard to 12 Gold-biscuits produced at Sikar by Servant Shivpal of Sikar Jewellers at Exh. 54, *panchnama* of seizure of 6 Gold-biscuits produced by Rajendra Sharma at Sikar at Exh. 65, *panchnama* of seizure of 7 Gold-biscuits produced by Rajendra Sharma at Sikar at Exh. 69, lie-detect / Polygragh and writings of accused Kailashsinh at Exh. 94, lie-detect / Polygragh and writings of accused Anandilal at Exh. 95, lie-detect / Polygragh and writings of accused Chhanabhai Narandas at Exh. 97, lie-detect / Polygragh and writings of witness

Shailendra at Exh. 96, etc. to prove the inextricable involvement of the appellants in the commission of the offence.

8. On perusal of the entire oral deposition and the documentary evidence, the prosecution, in our view, has established the case against the appellants for the offence punishable under Section 395 IPC.

9. As the prosecution has established the entire link connecting the appellants with the commission of offence under Section 395 IPC, we do not see any reason to upset the finding with regard to the involvement of the appellants in the commission of offence under Section 395 IPC. However, the appellants are convicted on 18-10-2003 by the learned Additional Sessions Judge, Fast Track Court, Himatnagar, and as on date, they have undergone approximately sentence of 7 years' RI. The expected date of their release is 17-12-2009. Considering the overall deposition in the present case, we feel that it would be just and proper in the facts and circumstances of the case, if we impose the sentence on the appellants which they have already undergone uptil now.

10. Section 395 IPC gives discretion to the Court. While imposing the sentence, the Court may impose the sentence upto 10 years and fine. Considering the fact that discretion is given to the Court to impose sentence and taking into account the entire gamut of oral deposition and documentary evidence, in our opinion, it would be just and proper

in the circumstances if the appellants are imposed the sentence which they have already undergone under Section 395 IPC and, therefore, we pass the following order:

ORDER

All the appeals are partly allowed. We hereby modify the punishment of rigorous imprisonment of 10 years and fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) imposed by the learned Additional Sessions Judge, Fast Track Court Himatnagar on each of the appellants *vide* judgment and order dated 18-10-2003 in Sessions Case No. 51 of 2002 to that of the period of rigorous imprisonment which the appellants i.e. (i) Badridan Fusdan Gadhvi, (ii) Anandilal @ Anandkumar Ghasiram, (iii) Chunilal @ Chhotulal Shivnathram Jat, (iv) Manoharsinh Amarsinh Sekhavat, (v) Kailashsing Chhagansing Chokhala, and (vi) Rajeshkumar @ Pintoo Rameshkumar Sain have already undergone uptill now and fine of Rs. 5,000/- (Rupees Five Thousand Only) each, in default, further RI of 1 month. *Muddamal* shall be disposed of in terms of the judgment and order dated 18-10-2003 passed by the learned Additional Sessions Judge, Fast Track Court, Himatnagar. The appellants shall be released forthwith, if not required in any other case.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

/shamnath